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OFFICE OF THE PUBLIC DEFENDER
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STATE OF DELAWARE

COMPENDIUM OF RECENT CRIMINAL-LAW DECISIONS FROM THE DELAWARE SUPREME COURT

Cases Summarized and Compiled by
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DELAWARE SUPREME COURT CASES
OCTOBER 2007 THROUGH DECEMBER 2007

CHAKKIRA WONNUM V. STATE, (DEC. 26, 2007): EXPERT PSYCHOLOGICAL REPORTS/ DURESS DEFENSE/JUDICIAL CONDUCT

D, a 17-year-old female runaway, was charged with intentional murder, felony murder, robbery and other offenses based on a robbery she committed at the direction of her much older, bigger, gun totin' drug dealer "boyfriend." Prior to trial, the State filed a motion to exclude a psychological report conducted by D's expert. The court excluded the report without reading it and without allowing D the opportunity to respond. Later, at trial, D testified in her own defense that her "boyfriend" had repeatedly beaten her. One time in particular was when she did not complete a robbery as he ordered. However, the court denied defense counsel's request for a duress-defense instruction as provided by 11 *Del.C.* §431.

On appeal, the Court held that the trial judge abused her discretion when she excluded the psych report without reading it or allowing D to respond. The Court ruled that the report helped explain that D did not "intentionally or recklessly place … herself" in the situation" whereby she was threatened by her boyfriend to commit the crimes.

Additionally, the Court held that D's testimony at trial coupled with the report that was excluded was sufficient evidence to warrant a duress-defense instruction. The jury, not the judge, is to assess the facts to determine whether D was coerced by threat of bodily harm and was in imminent fear of bodily harm if she did not commit the robbery as Martin directed.

The judge committed harmless error when she told the jury that Wonnum testified that she was "17 years old." This went to an element of one of D's offenses. However, there had been no dispute at trial as to D's age.

MARTINI V. STATE, (DEC. 21, 2007): VOP/SENTENCING

D was alleged to have violated his probation because he had been arrested on criminal impersonation and forgery charges. It was also claimed that he skipped office visits, sex offender meetings and his curfew. His probation was revoked and he was given 6 years at Level V.

At his hearing, D insisted that he was not Martini but was Kedar Anshari Ptah-El. The judge told him that his identity had already been established and that the only reason he was there was to be sentenced. D continued to argue with the judge, so she found him in contempt, ordered him out of the courtroom then sentenced him in *abstenia*.

On appeal, the Court found that D's minimum due process rights were violated as he was not given the opportunity to be heard, present evidence or to question witnesses as

is required under Superior Court Criminal Rule 32. 1. No hearing was held to determine whether D was in violation; the judge's actions were not a reasonable response to D's conduct; and requiring D to admit his name was Martini would have exposed him to criminal liability on the charges for which he was later found not guilty.

ANDREW BROWN V. STATE, (DEC. 17, 2007): JUVENILES' 6TH AMENDMENT RIGHT TO COUNSEL; 3507-VOLUNTARINESS; JENCKS

D, 17 years old, was indicted on murder first degree and related charges for the shooting death of V. He was later taken into custody by the NYPD. WPD officers went to New York and interrogated D. The State conceded that this interrogation violated D's rights. However, D later made an incriminating statement to the NYPD officers while he was being transported. At a suppression hearing, the judge conducted a 5th Amendment analysis with respect to the NYPD statement and found the statement admissible.

On appeal, the Court reaffirmed the need to apply "special scrutiny" to incriminating statements made by juveniles. Here, the WPD interrogation violated D's 6th Amendment right to counsel as he was already indicted when they questioned him. After invoking the right to counsel, admissibility of subsequent statements rests on whether police "deliberately elicited" information from D, which is a different standard from custodial interrogation. Thus, the judge was required to conduct a 6th Amendment review with respect to the NYPD statement. The Court remanded the case back for further development of the record with respect to circumstances of the NYPD statement and for the judge to conduct a 6th Amendment analysis.

The Court also ruled that taped statements of State's witnesses that were played at trial pursuant to 3507 were not obtained as the result of coercion even where there was a threat that the W could obtain more jail time. Finally, the State's inadvertent failure to provide witness statement to D until after her testimony did not warrant a mistrial as D was then given to opportunity to recall W.

TYRONE PRINGLE, (DEC. 17, 2007): BURGLARY FIRST/POSSESSION OF A WEAPON

D was convicted of burglary first, a weapon offense and other related offenses. At trial he made a motion for judgment of acquittal on the weapon offense because the State provided no witnesses or fingerprint evidence implicating him. The trial court denied the motion.

On appeal, the judge's ruling was affirmed as there was sufficient circumstantial evidence that D was in possession of a gun at the time of the burglary. When he was captured by police, after he had fled the scene, he had an empty holster on him. Also, a stolen gun which fit that holster was found on his attempted escape route.

ALYSSA RAMBO V. STATE, (DEC. 13, 2007): JUVENILES' 5TH AMENDMENT RIGHTS/ATTEMPTED MURDER

D, 15 years old, called V to pick her up at the playground. When V arrived, D got in the car. D then reached over, turned off the car and removed the keys from the ignition. Two masked men approached, demanded money and fired shots toward V who was not harmed. Later, in the presence of her grandparents and another family member, D spoke with police and denied involvement. D then spoke with police again, this time at the station. A family friend, Cannon went into the interrogation room with her. Police read *Miranda* and a voice can be heard on the audio tape indicating a willingness to talk. Police later testified that D appeared to understand as she nodded affirmatively. The judge ruled the statement was admissible because of an implied waiver. D was found delinquent of attempted murder first degree, robbery first degree and other offenses.

On appeal, the Court held that the tape did not reveal a clear waiver of D's rights as the detective breezed through *Miranda* and followed up with "do you want to talk?" The Court concluded that it was Cannon and not D who responded "yes." Applying stricter scrutiny because D was a juvenile, the Court could not conclude that she knowingly and voluntarily waived her rights on implied waiver theory.

D and State agreed that attempted first degree murder was to be vacated because guilt was found on analysis of the elements of felony murder. Attempted felony murder is not recognized in Delaware.

JONES V. STATE, (DEC. 12, 2007): *BATSON*/3507/CONFRONTATION CLAUSE/ RECUSSAL

D, 17 years old, was part of a drug ring in which V was the leader. One evening, D and his Co-D were in a car with V. D shot and killed V. D and Co-D then set car on fire. They went to V's house and shot and killed V's fiancée. V's brother was also shot, but survived. The brother later identified D and Co-D. Co-D's girlfriend told police of his plans to kill V with D's help. D was subsequently convicted of murder first and related charges and the jury recommended the death penalty 11 to 1. Before sentencing, *Roper v. Simmons* was decided and made D ineligible for the death penalty. D was sentenced to life.

***BATSON*:** During jury selection, the State used 6 of 8 peremptory challenges to remove members of minority groups. Each time D objected, the judge found the State's race neutral reasons to be acceptable. On appeal, the Court remanded for the trial court to assess the credibility of the State's positions on the strikes and to conduct a correct *Batson* analysis. The trial court found the State's race neutral reasons to be credible and logical. The Court upheld this finding as it was not clearly erroneous.

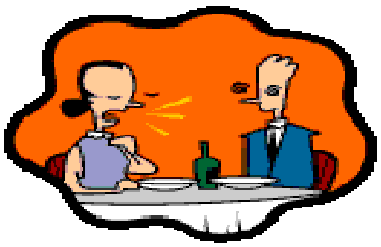
3507: The State admitted 3507 statements of a State witness that incriminated D. D argued that the statements were inadmissible because W relayed conversations she had with another, thus the statements contained double hearsay. On appeal, the Court upheld the judge's decision allowing the admission of the tapes as she found the outer layer admissible under 3507 and the inner layer admissible under either present sense impressions or statements by coconspirators in furtherance of a conspiracy.

The trial court did not err when it refused to sequester W during officer's testimony regarding voluntariness of W's 3507 statement. And, sending the actual tape of the statements back with the jury did not amount to plain error.

CROSS EXAMINATION: D sought to examine police officer as to whether V's brother had been prosecuted for any marijuana related offenses. The State objected as to relevance and the court sustained. The judge clarified that her ruling was not on relevance but on lack of foundation. On appeal, the Court upheld this decision ruling that the question was not probative as to the testifying witness' motive to testify falsely. Additionally, the evidence sought did come in at trial through other evidence.

Also, the trial court originally did not permit D to impeach W based on her pending charges. However, the State recalled the W and D chose not to cross examine her. Thus, no reversible error.

PHOTOGRAPHS: Allowing photographs of V's charred remains was not an abuse of discretion.



RECUSAL: After trial and before the penalty hearing, the judge was seen and heard at a restaurant talking about the case and referring to defense counsel with the use of profanity. After D filed a motion for recusal, the judge admitted to talking about a sidebar conversation she had with defense counsel. She had exhibited extreme animosity toward defense counsel as she was angry over his behavior. However, she denied that she said she was going to give D the death penalty. On appeal, the Court ruled that "it was inappropriate for the trial judge to discuss the case in a public setting where she could be overheard and misconstrued." Yet, there was no abuse of discretion in her analysis of the subjective test and there was no "appearance of bias sufficient to cause doubt as to the trial judge impartiality." Also, the issue was moot as D received a life sentence because he was a juvenile.

EDWARD J. MILLS, JR. V. STATE, (DEC. 3, 2007): INTENT TO DELIVER/SUPPRESSION/IMPROPER PROSECUTORIAL COMMENTS/ INTRODUCTION OF MEDICAL RECORDS/CONTINUANCE REQUEST

Probation Officers saw a car stopped in the middle of a street with the radio blaring. The driver then spun the car's tires and made a turn without using a signal. The P.O.s approached the car and asked D to present his license, registration and insurance. D did not have a license. According to the P.O.s, D was evasive, speaking quietly and used someone else's name. While being searched for weapons, D pushed off the car into one of the P.O.s. One officer was struck in the face and the other was bitten. D reached into his pocket and attempted to dispose of 5 grams of cocaine which were recovered. The cocaine was in chunks and had no packaging. There was no personal use paraphernalia found. At trial an expert testified that this is consistent with a seller and not a user. D did not file a motion to suppress. During closing, the prosecutor stated, "I told you in my opening that this is an example of just how the streets are dangerous." He also referenced the expert's qualifications. D was convicted of drug, resisting arrest and other related offenses.

On appeal, the Court upheld the trial court's denial of D's motion for judgment of acquittal on possession with intent to deliver. The expert's testimony was sufficient to support the jury's verdict. Also, the prosecutor's statement was not *per se* improper due to the use of the pronoun "I." Nor was it improper vouching to mention the expert's qualifications.

The court ruled that the totality of the circumstances surrounding D's stop, search and arrest did not arise to error that amounted to reversal under plain error standard.

At trial, the State had presented evidence of the officer's injuries through his testimony and through his medical records. No custodian was used to introduce the records. The Court ruled that this was harmless error because the officer's testimony alone supported the element of physical injury.

Finally, the judge did not abuse his discretion when he denied D's request for a continuance on the day of trial in order to obtain counsel. He had never previously complained about his current counsel and had opportunities to retain new counsel.

CECIL HALL V. STATE, (OCT. 30, 2007): DOUBLE JEOPARDY/CRUEL AND UNUSUAL PUNISHMENT

D pled to 2 counts of burglary third and the State dropped his remaining charges. During the plea colloquy, he stated that he understood all of the forms he signed and that he had signed them voluntarily. He was happy with his attorney and admitted that he was a habitual offender. D then filed a *pro se* motion to dismiss the charges on the grounds of double jeopardy because a PA court had already ordered him to pay restitution for the

crimes committed against V in PA and DE. He also argued that his habitual offender sentence was cruel and unusual punishment.

The Court held that he waived his double jeopardy claim when he entered the guilty plea. Further, the PA judge recognized that he did not have jurisdiction over DE crimes. The Court also applied a two-step analysis to determine whether D's habitual offender sentence is unconstitutional. It compares the sentence imposed with the crime committed. Only if this comparison raises an inference of disproportionality will the court move on to the second step - comparing D's sentence with those in similar cases. Here, there was no inference of disproportionality.

YOLANDA JETER V. STATE, (OCT. 29, 2007): FELONY SHOPLIFTING

D was apprehended for shoplifting. A store employee then rang up the merchandise in her possession on a "training receipt." The receipt was given to a police officer who noted in his report that the total was $1,033.22. He then threw the receipt away. D was convicted of felony shoplifting and conspiracy second. At trial D had filed a motion for judgment of acquittal as to the element of the value of the merchandise. This was denied.

On appeal, D argued that there was no evidence that it was more than $1,000. D argued that she was unable to dispute the value on the receipt and determine whether items were rung up twice etc. The Court held these arguments went to the weight of the officer's testimony and was for the jury to determine. There was sufficient evidence for a rational trier of fact to conclude that the value was over $1,000.

JOSE ARES, (OCT. 18, 2007): LIMITS ON THE PEDIGREE EXCEPTION TO *MIRANDA*/RACIAL EPITHETS

After D was arrested, a detective notified Craft, the booking officer, that D had invoked his *Miranda* rights. Craft then obtained pedigree information from D and began to fingerprint him. While fingerprinting him, Craft asked D whether he had any children. D said he did not want "to bring his family into this." He then went on to explain what happened. The trial court denied D's motion to suppress this statement. D was convicted of murder second degree and assault first degree after shooting his wife and killing the man he found in bed with her.

On appeal, the Court held there was a *Miranda* violation. The question was not part of standard procedure. Craft: initiated the conversation; should have known that his actions were likely to elicit an incriminating response; and stated that he asked the question to relax D even though there was no indication this was necessary. Further,

asking a question about his family in the context of attempted murder of spouse not likely to relax. Thus, the question was the "functional equivalent" to interrogation as it was not a "routine booking question." The Court found harmless error because there was overwhelming independent evidence of D's state of mind at time of the crime.

At trial, D's wife had testified that the male victim fell to the floor after D shot him. D then leaned over the bed, pointed the gun at him and called him a "fucking nigger." D went on to express disbelief that she was "still calling that fucking nigger's name." The trial judge allowed this testimony, over D's objection, on the ground that it went to D's state of mind. On appeal, the Court held that D's state of mind was essential to his EED defense. While the remarks were "unfortunate and likely inflammatory," the State did not improperly inject race into the case to deprive D of a fair trial.

MARCUS JAMES V. STATE, (OCT. 18, 2007): CONDITIONS OF PROBATION

Part of D's probation was to participate in sex offender counseling and to have no contact with any children under 18 except for his biological children. D was involved in a consensual relationship with an adult woman during his participation in counseling. D was subsequently violated based on a recent conviction of driving without a license. At the VOP hearing, the P.O. raised D's consensual relationship as a concern. The court stated it was not concerned with that but with D's criminal history. As part of his sentence, the court ordered, in addition to other conditions, that D: not be alone, after dark, with a female other than his grandmother.

On appeal, the Court upheld this condition as the trial judge specifically stated he was not considering the adult relationship. Also, due to the nature of his prior offenses the condition was reasonably related to the need to protect the public from further crimes. The condition was not overbroad, D could father children and could associate with women during the day or even at night as long as in the company of someone else.

ANTHONY NASTATOS V. STATE, (OCT. 11, 2007): BURGLARY

D was convicted of attempted second degree burglary, criminal mischief, offensive touching and non compliance with bond. The underlying crime for the attempted burglary was offensive touching. D's motion for judgment of acquittal on the attempted burglary charge had been denied. While this was a 26(c) case, the Court did discuss the application of the recent *Dolan* decision.

Essentially, after telephone conversations between D and V, V arrived home and found D intoxicated on her balcony. She told D to leave and he refused. V called a male friend over who attempted to calm D down. D attempted to force his way in the house. A struggle ensued and D hit V in the face. D also broke the outer pane of the sliding glass door. When the judge found D guilty of the attempted burglary, she did not state her finding as to when D formulated the intent to commit the offensive touching. On appeal, the Court upheld this ruling because a neighbor testified that he heard D banging on V's door and shouting that he wanted to kill her. Also, the arresting officer testified he heard D say he was trying to hit her.

ALFONSO QUINTERO, (OCT. 1, 2007): PEDIGREE EXCEPTION TO *MIRANDA*

D was charged with Rape Third degree. The allegation was that he was 28 years old, had sexual relations with V, and that V was 15 years old. The only evidence of D's age admitted at trial was the information given to police, without Miranda warnings, when he was asked for his had not been given his Miranda warnings.

The Court held that the date of birth question was squarely within the pedigree exception even though it went to an element of the offense. There was no sign that police asked it in an effort to elicit incriminating information. In fact, the officer apparently, already had that information.

DARNELL PIERCE, (NOV. 8, 2007): AUTHENTICATION/RACIAL EPITHETS/RELIGIOUS COMMENTS

V was found dead with three .22 caliber bullets in his body. At trial, there was dispute as to whether D was seen with a gun. Also, D provided various alibi stories. Police obtained a search warrant for D's brother's apartment where D had stayed on occasion. A .22 caliber handgun was found with 3 live rounds. Ballistics testing was inconclusive. D was convicted of murder second and possession of a firearm during the commission of a felony.

While in jail, D wrote letters asking witnesses to lie for him. In a letter, D described people on the street as "niggaz." The letter also stated that "Allah was on his side." The unredacted letter was entered into evidence.

On appeal, the Court upheld trial court's decision finding gun admitted into evidence was properly authenticated. While the State could not authenticate the gun directly, it was required to: 1) produce a foundation witness to testify that the item is at least like the one associated with the crime; and 2) produce evidence that the instrumentality is connected to D and the crime. Here, there was sufficient circumstantial nexus between the gun and D and a connection between the gun and the crime.

On the other hand, the trial court did err when it allowed the racial epithet and religious reference into evidence. This was harmless because there was otherwise sufficient evidence to convict.